

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4000 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PINJARA ISMAIL JUSAB

Versus

DEPUTY COLLECTOR

Appearance:

MR MB FAROOQUI for Petitioner

MR K.G.SHETH, Learned AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The petitioner has preferred this petition under Articles 14, 19 and 227 of the Constitution of India read with the provisions contained in Bombay Land Revenue Code

and Bombay Tenancy and Agricultural Lands Act, 1958 and Bombay Tenancy Administration Kuchchh Vidarbha Area (Vistar) Act, challenging the orders of the respondents placed at Annexure-A, B and C to the petition.

2. The petitioner has contended in this petition that the petitioner is an owner and lawful occupant of the agricultural land being Survey No. 27 admeasuring at 11 Acre and 5 guntha situated in village Charakhada, Tal. Nakhatrana, Dist. Kuchchh. That the petitioner has purchased the said land from Rabari Mamu Deva by registered sale deed on 22.8.1975 and after purchasing the said land, the petitioner has spent huge amount for levelling the land and putting it in a proper condition for the purpose cultivation. That necessary entries were posted in the revenue records of right and the said entries were duly certified by the competent authority. That the petitioner had paid Rs. 3000/- as a consideration for the said purchase to seller of the said land. Since then the petitioner is continuously in possession of the aforesaid land since 1975. That the petitioner has been cultivating the said land right from 1975 till date of filing of this petition.

3. The learned advocate for the petitioner states that the Deputy Collector, Nakhatrana passed the order for cancelling the entry no. 164 which is placed at Annexure-A at page - 10. That the said matter was carried to the Collector Kuchchh at Bhuj. The appeal memo is placed at Annexure-B at page-11 to the petition. That the collector, Kuchchh at Bhuj entertained the said appeal No. 14 of 1999 and passed the order dated 23.3.1990. The same has been produced at Annexure-D at page -15 to the petition. By the said order, the Collector partly confirmed the order of the Deputy Collector and revoked the order of the Mamlatdar accepting the sale in favour of the petitioner. The collector further directed that the Mamlatdar, Nakhatrana should prepare papers with respect to violation of the terms and conditions for new tenure land and should submit report to the Deputy Collector within a month. The petitioner preferred revision application before the State Government and order of the State Government has been produced by the petitioner at Annexure-C at page-18 to the petition. The said order has been passed on 15.9.1990 dismissing the said revision application of the petitioner and confirming the order of the Collector dated 23.3.1990. Feeling aggrieved by the said judgment of the State Government, the petitioner has preferred this petition before this Court.

4. It has been mainly contended here that the aforesaid sale was confirmed by the Mamlatdar, Nakhtrana as back as in 1983 and that thereafter, fresh proceedings were initiated in 1989 (6 to 7 years) and that the authority could not undertake revision or other matters suo-motu or otherwise after a long lapse of time. That the petitioner, in between spent, huge amount and prepared the said land for cultivation. Therefore, the action of the respondents in passing aforesaid orders at Annexure-A onwards are illegal mainly on the ground that the actions have been taken at late stage and there is no explanation for taking the said actions so late. Therefore, there is unexplained inordinate delay in taking such actions at late stage, which would not be permissible in view of the several decision of this Court as well as of the Hon'ble Apex Court. The petitioner therefore states that the said orders of the respondents are illegal and prays for appropriate writ, order or directions for quashing and setting aside the aforesaid orders of the respondents placed at Annexures- A, B and C to this petition.

5. On receiving the said petition, rule was issued and ad-interim relief in terms of para.7(B) was granted on 16.6.1992. It appears that matter has been adjourned from time to time, but interim relief granted earlier has been continued by subsequent orders. Rule has been served upon the respondents and Mr. K.G.Sheth, learned AGP appears for State. I have heard the learned advocates for the parties and have perused the papers.

6. Now, it is not much in dispute that the petitioner has purchased the aforesaid land as back as on 22.8.1975. The respondents have not filed affidavit nor have produced any material on record. They do not dispute this aspect of the case. However, during the course of argument, it has been accepted that the petitioner has purchased the said land as back as on 22.8.1975. It has been alleged by the petitioner that the proper entries have been posted by way of mutation in Government record of right. This can be gathered from the village form no.6 produced by the petitioner showing that the said entry was posted in the name of the petitioner as back as on 5.2.1982. This shows that the respondents were in full knowledge that the petitioner had purchased the said land in the year 1975.

7. It appears that the Special Mamlatdar has passed order on 11.3.1983 at page -22 stating that the aforesaid sale is not illegal and, therefore, notice issued by him was withdrawn. The Mamlatdar recorded finding that the

petitioner was agricultural labour and, therefore, sale was not illegal. Therefore, notice was withdrawn. It further shows that the respondents were in full knowledge about the aforesaid transaction in 1975. Thereafter, first notice came to be issued and served upon the petitioner in the year 1989. There is no dispute about the same. This shows that the sale is of 1975. Initial proceedings were initiated in 1983 and they were terminated in 1983 and notice was withdrawn in 1983 and, therefore, fresh proceedings were started in 1989. Even if we consider initial proceedings of 1983 then those proceedings had commenced about 7 to 8 years after the said sale was affected in 1975 in favour of the petitioner. There is no reason or explanation put forward by the respondents for the said inordinate delay of 7 years. Here, we find certain decisions of this court as well as of the Hon'ble Apex Court showing that the suo-motu revision proceedings may be entertained within a reasonable time, if no time limit is prescribed in the law. That refers to Section 211 of the Bombay Land Revenue code and it has been clearly laid down time and again that when no time limit has been fixed then suo-motu revisional jurisdiction has to be undertaken within reasonable time. What is reasonable time limit will be a question of fact in different cases and, therefore, it has to be decided accordingly on the facts and circumstances of the case.

8. In the present case, we find that there is no explanation or reasons put forward by the respondents about inordinate delay of at least 7 years. In other words, there is delay of at least 7 years and there is no explanation for starting proceedings so late. It would therefore be necessary to consider the decision of the Hon'ble Apex Court in the case of State of Gujarat Vs. Patel Raghav Natha and Others, reported in 1969 GLR 992 wherein it has been held that when there is no period of limitation prescribed under Section 211 of the Bombay Land Revenue Code, it is plain that this power must be exercised in a reasonable time having regard to the nature of the order. There it has been further observed that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Section 65 shows that the period of three months is considered ample time for the Collector to make up his mind and beyond that the Legislature thinks that the matter is so urgent that the permission shall be deemed to have been granted. Reading Sections 211 and 65 it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector.

9. The aforesaid decision of the Hon'ble Apex Court has not been overruled by subsequent decisions. On the contrary, the same has been followed in so many subsequent matters also. It is true that whether or not the powers are exercised within reasonable time, is a question of fact. When the question of fact arises, some material or evidence is required to be placed on record. The respondents have not placed anything on record to show as to why powers are exercised after lapse of not less than 7 years. In this case, the respondents have exercised powers after inordinate and unexplained delay of not less than 7 years. Therefore, the said actions are required to be quashed and set aside and cannot be sustained in view of the decisions of the Hon'ble Apex Court. I am of the view, that the impugned actions and the consequent orders of the respondents in respect of the land in question suffer from inordinate and unexplained delay of more than 7 years and, therefore, cannot be sustained for any purpose.

10. In the aforesaid view of the matter, it is not necessary to consider other aspects of the petition. Therefore, the petition is required to be allowed on the ground that the respondents have not commenced proceedings within a reasonable time and, therefore, those proceedings and consequents orders cannot be sustained on the ground of inordinate and unexplained delay of more than 7 years. The net result is that the petition is allowed and the orders of the respondents placed at Anneuxres-A, B and C are ordered to be quashed and set aside. Rule made absolute to that extent with no order as to costs.

(D.P.Buch,J)

(vipul)